# Shaharudin bin Idris v Menteri Hal Ehwal Dalam Negeri Malaysia & Anor and other applications

HIGH COURT (PENANG) — CRIMINAL APPLICATION NOS 44–31–92; 44–77–92; 44–79–92, 44–87–92 AND 44–93–92
VINCENT NG JC
2 NOVEMBER 1992

***Constitutional Law*** *— Habeas corpus — Detention order issued in breach of s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 — Whether the de minimis principle applied — Whether errors in prescribed forms were fatal to the detention orders made — Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1) — Interpretation Act 1967 s 62*

The applicants were detained under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). Counsel for the applicants advanced only one ground in support of their prayer for habeas corpus, namely, that the detention orders had been issued in breach of s 4(1) of the Ordinance.

**Held**, allowing the applications:

(1) Section 62 of the Interpretation Act 1967 does not apply as it concerns the issue of prescribed forms. In this case, no forms in respect of the detention orders were prescribed and it quite clearly shows that the legislature had intended all detention orders made under s 4(1) of the Ordinance to be a matter of substantive law and not a matter whereby the de minimis principle is applicable.

(2) A detainee is entitled to know from the face of the detention order under which particular limb of s 4(1) he is being detained — given that the two limbs are to be read disjunctively — even if he is not entitled to question or challenge the detailed factual basis of his detention.

**[Bahasa Malaysia summary**

Pemohon telah ditahan di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 ('Ordinan itu'). Peguambela pemohon hanya mengemukakan satu alasan menyokong permohonan untuk habeas corpus, iaitu, bahawa perintah tahanan telah dikeluarkan melanggar s 4(1) Ordinan itu.

**Diputuskan**, membenarkan permohonan itu:

(1) Seksyen 62 Akta Tafsiran 1967 tidak terpakai kerana ia berkaitan dengan pengeluaran borang yang ditetapkan. Di dalam kes ini, tidak terdapat borang yang ditetapkan untuk perintah tahanan itu dan jelas ditunjukkan bahawa badan perundangan bermaksud supaya semua perintah tahanan yang dibuat di bawah s 4(1) Ordinan itu akan merupakan suatu perkara undang-undang

substantif dan bukan suatu perkara di mana prinsip de minimis boleh digunakan.

(2) Seseorang tahanan berhak mengetahui dari muka perintah tahanan di bawah cabang yang mana satu dalam s 4(1) beliau sedang ditahan — memandangkan bahawa kedua-dua cabang hendaklah dibaca secara berasingan — walaupun beliau tidak berhak menyoal atau mencabar asas fakta yang terperinci mengenai penahanannya.]

[*Editorial Note*: The respondents have appealed to the Supreme Court vide Criminal Appeal Nos 05–163–92, 05–180–92, 05–181–92, 05–179–92 and 05–177–92.]

**Notes**

For cases on habeas corpus, see 5 *Mallal's Digest* (4th Ed) paras 1243–1295.

**Cases referred to**

1 *Lim Thian Hok v Minister of Home Affairs & Anor* [1993] 1 MLJ 214 (folld)

2 *PE Long & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1976] 2 MLJ 133 (distd)

3 *Menteri Hal Ehwal Dalam Negeri Malaysia & Anor v Mohd Zambri bin Mohd Ariffin* [1990] 1 MLJ 102 (distd)

4 *Yeap Hock Seng v Minister for Home Affairs Malaysia & Ors* [1975] 2 MLJ 279 (refd)

**Legislation referred to**

Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)

Interpretation Act 1967 s 62

*V Shanmugam* (*Shanmugam & Co*) for the applicants.

*Mahmud bin Haji Abdullah* (Federal Counsel) for the respondents.

**Vincent Ng JC**: The applicants in all the above criminal applications had been detained by virtue of the detention orders dated 6 December 1991, 25 October 1991, 24 October 1991, 19 October 1991 and 25 October 1991 respectively, issued pursuant to s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance') under the hand of the Deputy Minister for Home Affairs.

At the outset, all the parties hereto agreed that all the above applications be heard together as counsel had also agreed at the hearing, to advance only one ground (common to all applications) in support of their prayer for habeas corpus, namely, that the five respective detention orders had been issued in breach of s 4(1) of the Ordinance.

In their submissions, counsel only relied on the authority of my decision in the case of *Lim Thian Hok v Menteri Hal Ehwal Dalam Negeri & Anor*[1] ('the earlier criminal application') wherein I had held that the detention order was bad for being issued in breach of s 4(1) of the Ordinance.

The learned senior federal counsel submitted only three authorities (not submitted during the hearing of the earlier criminal application) to enable me to reconsider — which I am amenable to do if sufficiently persuaded and warranted — my decision in the earlier criminal application. A

I shall now state the three authorities and deal with them in seriatim:

(a) Section 62 of the Interpretation Act 1967 ('the Act') which states as follows: 'Any written law prescribing a form shall be deemed to provide that an instrument or other document purporting to be in that form shall not be invalidated by reason of any deviation from the form if the deviation has no substantial effect and is not calculated to mislead.' B
(b) *PE Long & Ors v Menteri Hal Ehwal Dalam Negeri & Ors.*[2]
(c) *Menteri Hal Ehwal Dalam Negeri Malaysia & Anor v Mohd Zambri bin Mohd Ariffin.*[3] C

Unlike the issues raised in the current applications, both s 62 of the Act and *PE Long & Ors*,[2] concern the issue of *prescribed forms*. In *PE Long & Ors*,[2] the court quite rightly held that under the de minimis non curat lex principle and s 7 of the Interpretation and General Clauses Ordinance 1948, minor errors in the prescribed forms in Bahasa Malaysia served on the detainees (being Form I under r 3(2) of the Public Order and Prevention of Crime Ordinance 1969) were not fatal to the detention order made. The reasons being that the (prescribed) forms were made to facilitate easy compliance with the rules, and were not substantive law and that though the detainees therein (both foreigners) were served Form 1 in Bahasa Malaysia they were also served similar forms under Form 13A in English, in respect of which it was neither denied that they knew of their right to make representations nor that they were given the opportunity to make representations. For reasons best known to themselves they were not interested or did not want to make any representations against the order of detention. However, it is important to note that this authority as well as the case of *Yeap Hock Seng v Minister for Home Affairs, Malaysia*,[4] cited therein, were decided several years before the issue of mala fides on the part of the detaining authorities in making the order of detention became non-justiciable, by virtue of s 7C(1) of the Ordinance, which came into effect on 24 August 1989. D E F G

Indeed, the very manner of expression (as I have underscored) in s 62 of the Act, which states: 'Any written law *prescribing a form* shall be deemed to provide that *an instrument or other document purporting to be in that form* shall ...' when considered with the plain fact that no form in respect of the detention orders are prescribed under the Ordinance or Public Order and Prevention of Crime (Procedure) Rules 1972, quite clearly shows that the legislature had intended all detention orders made under s 4(1) of the Ordinance to be a matter of substantive law and not a matter whereby the de minimis principle is applicable. In short, a detainee is entitled to know from the face of the detention order, under which particular limb of s 4(1) he is being detained (given that the two limbs are to be read disjunctively) even if he is not entitled to question or challenge the detailed factual basis of his detention. H I

A The other case of *Menteri Hal Ehwal Dalam Negeri Malaysia & Anor v Mohd Zambri bin Mohd Ariffin*[3] is not in the least bit applicable to assist in the interpretation of s 4(i) of the Ordinance, especially in regard to the form that the detention order is to take in order to comply with the provision. This case is an authority which only held that by virtue of a special B provision, being s 25 of the Dangerous Drugs (Special Preventive Measures) Act 1985 itself, the ambit and scope of the Ordinance has been enlarged to apply to persons involved or associated with the trafficking of drugs.

For the reasons herein, and for the same reasons I gave in my written judgment in the earlier criminal application, I would allow all the five C applications under PJ 31/92, 77/92, 79/92, 87/92 and 93/92 and I accordingly order the issue of the writ of habeas corpus in respect of each of the applicants and their release forthwith.

*Applications allowed.*

D Reported by Jeanne Tan

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